

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

THOMAS J. YORKEY
Junior Party
(Patent 5,645,060)¹

v.

MOHAMED K. DIAB, ESMAIEL KIANI-AZRBAY JANY,
and WALTER M. WEBER
Senior Party
(Application 09/111,604)²

Patent Interference No. 105,477 (JL)
(Technology Center 3700)

Before McKELVEY, Senior Administrative Patent Judge, LEE and MEDLEY,
Administrative Patent Judges.

LEE, Administrative Patent Judge.

Judgment -- Merits -- Bd. Rule 127

¹ Based on Application 08/490,315, filed June 14, 1995. The real party in interest is Nellcor Puritan Bennett Incorporated. (Paper 9).

² Filed July 7, 1998. The real party in interest is Masimo Corporation. (Paper 6). Accorded the benefit of Application 08/943,511, filed October 6, 1997; Application 08/572,488, filed December 14, 1995; Application 08/132,812, filed October 6, 1993. (Paper 1).

1 Junior party's Yorkey's Motion 3 seeking judgment on the basis of priority
2 of invention has been denied in a separate paper. It is now time appropriate to
3 enter judgment in this case. It is

4 **ORDERED** that judgment on priority as to the subject matter of Count 1 is
5 herein entered against junior party THOMAS J. YORKEY;

6 **FURTHER ORDERED** that claims 6 and 9 of junior party THOMAS J.
7 YORKEY's involved patent, which correspond to Count 1, are herein cancelled;

8 **FURTHER ORDERED** that if there is a settlement agreement, the parties
9 should note the requirements of 35 U.S.C. § 135(c) and Bd. Rule 205; and

10 **FURTHER ORDERED** that a copy of this judgment be placed in the
11 respective involved application and patent of the parties.
12

13 By Electronic Transmission

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